IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 811 OF 2000

Madhukar Ganpat Nigade ...Appellant
(Original Accused)

V/s

The State of Maharashtra ...Respondent.
(Original Complainant)

Mr. Arfan Sait for the appellant.

Mr. A.S. Hingorani. APP for the State.

CORAM: D.G.DESHPANDE &
V.M. KANADE, JJ.

DATE: 29th November, 2005

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. The appellant is challenging the judgment and order passed by the Sessions Judge, Greater Bombay in Sessions Case No.902 of 1994 dated 10/07/1998 whereby the appellant - accused was convicted for an offence punishable under section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and pay fine of Rs 1000/- and, in default of payment of fine, to suffer further rigorous imprisonment for three months.

2. Brief facts are as under :-

3. The prosecution case in brief is that the complainant Sunanda Nigade was residing with her husband at Worli Police Quarters in Building No.50, Room No.2, Ground Floor. Alongwith them, her mother-in-law Kamal Ganpat Nigade (since deceased), her sons and one daughter and one brother-in-law Shankar were also staying in the same quarters. One other younger brother of her husband Madhukar - the accused, appellant herein was residing elsewhere. However, he used to visit their house to meet mother-in-law of the complainant. The prosecution case is that the appellant used to come to their house alongwith one Tilotama Murlidhar Mayekar (since deceased). Their marriage was to be performed after Diwali.

4. On 8/10/1993, at about 2.00 p.m. to 2.30 p.m., the accused came to the house of the complainant and in the evening the said Tilotama came to the residence of the complainant Sunanda. After sometime, the accused called deceased Tilotama and both of them went into bed-room and the accused closed the door from inside. After about 10/15 minutes, Tilotamma started shouting and, therefore, the complainant went towards the bed-room and asked the accused to open the door. However, the accused told her that Tilotama was

sleeping and requested the complainant to allow her to sleep. The complainant, however, was repeatedly asking the accused to open the door. However, he did not open the door. At about 8.00 p.m. the appellant's younger brother Shankar came to the residence of the complainant and he too asked the accused Madhukar to open the door. However, there was no response from the accused. In spite of all efforts being taken by him, the accused did not open the door. The husband of Sunanda came back from work at 9.45 p.m. and the complainant informed the entire incident to him. He also asked the accused to open the door and since there was no response from him, he put an iron rod and and broke open the door. The complainant Sunanda and her husband entered the bedroom. They saw that Tilotama was lying in the pool of blood near the door of the bed-room and there was one knife soaked with blood lying near the feet of the deceased. The accused Madhukar was sleeping and he had put a towel around his waist and Sunanda's husband Ashok closed the door from outside and informed the police who arrived at 10.25 p.m. The statement of the complainant and others were recorded and the offence under section 302 of the Indian Penal Code was registered. The panchanama of the scene of offence was made and the articles found in the room were sent

to the Chemical Analyser. The post-mortem was performed on the dead body of the deceased Tilotama. The charge-sheet was filed. The trial court convicted the accused for an offence punishable under section 302 and sentenced him to suffer rigorous imprisonment for life.

5. The learned Counsel appearing on behalf of the appellant submitted that the accused was insane, though the plea of insanity was not taken in the trial court. He has taken us through the judgment and order of the trial court as also the oral and documentary evidence which was on record. He submitted that from the evidence of the complainant it can be seen that everybody knew that the appellant was mentally insane and he submitted that, therefore, the trial court ought to have passed the appropriate order under section 330 of the Criminal Procedure Code and ought to have send him to a mental attendant. He submitted that the accused was suffering from schizophrenia and, therefore, was not aware about his own actions and, therefore, he was entitled to get the benefit of section 84 of the Indian Penal Code. He submitted that the report was called for by this court after the appeal was admitted. He submitted that from the report, it can be seen that the accused is now

suffering from mental ailment. He also submitted from the evidence on record that, even otherwise, there was no evidence showing that the accused had committed the said offence.

6. It is not possible to accept the submission made by the learned Counsel appearing on behalf of the appellant. In order to get the benefit of section 84 of the Indian Penal Code, it has to be brought on record that at the time when the said offence was committed, the accused was mentally not fit to understand the consequences of his action and was of unsound mind at that time. It is admitted that the appellant in this case has not led any evidence in proving the plea of insanity. There is nothing on record to indicate that the accused was of unsound mind on or about the time of the occurrence of the incident. Section 84 of the Indian Penal Code reads as under:-

> "**84. Act of a person of unsound mind** - Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to

law."

From the plain reading of the said provision, it is clear that in order to claim the benefit under the section, the defence has to show that at the time of occurrence of the incident, he was of unsound mind. Since, admittedly, no such evidence has been brought on record, this submission made by the learned Counsel appearing on behalf of the appellant - accused cannot be accepted. Even assuming that at the subsequent stage, the accused was given treatment for his mental ailment, it would not be sufficient to give him the benefit of the defence of the plea of insanity as laid down under section 84 of he Indian Penal Code.

7. So far as the involvement of the accused in the commission of the offence is concerned, there is ample evidence on record. The Complainant Sundanda Nigade - P.W.1, Ashok Nigade - P.W.5 have stated in their evidence that the accused Madhukar has taken the girl in the bed-room in the evening at about 7.30 p.m. and Sunanda heard her shouts and though the accused was repeatedly asked to open the door of the bed-room, he refused to do so. Subsequently, after P.W. 5, husband of Sunanda, returned back, the door had been forcibly opened and the accused Madhukar was found

sleeping and there was only a towel around his waist. The girl was lying naked on the floor and there were as many as 31 insized wounds on her chest and her buttocks. The knife was lying near her body. All this overwhelming evidence clearly establishes that the accused had committed the murder of Tilotama. Though the complainant P.W. 1 - Sunanda had stated in her evidence that everybody in the house knew that Madhukar was mentally unwell, this does not help the case of the appellant as it appears to be an attempt to save the appellant. The inquest panchanama has been proved by an independent witness Miss Suman Bhagat - P.W.4. The Chemical Analyser's report also shows that the clothes of the deceased Tilotama were found having blood stains of Blood Group 'B' and the knife also had blood stains of Blood Group 'B'. The Chemical Analyser also has stated in his report that the Blood Group of the deceased Tilotama was 'B'. Dr. Ashok Shinde - P.W. 6 has deposed in the Court that there were as many as 32 external injuries and 31 internal injuries on the person of the deceased Tilotama.

8. The Supreme Court in the case of T.N. Lakshmaiah Vs. State of Karnataka reported in **(2002) 1 SCC 219** has held that the burden of proving the exception

under section 84 is on the accused. The Supreme Court in the case of State of M.P. Vs. Ahmadulla reported in **AIR 1961 SC 998** has held that the burden of proving that the mental condition of the accused was not proper at the time when the said offence was committed lies on the accused in view of section 105 of the Evidence Act. It is a settled position in law that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved. The Supreme Court in the case of Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat reported in **AIR 1964 SC 1563** has held that the burden to prove that the accused was entitled to get the benefit of the exception laid down under section 84 was on the accused and, he has to satisfy the standard of a 'prudent man'. In the present case, admittedly, this burden is not discharged and even otherwise considering the conduct of the accused before commission of the offence and after the offence was committed, does show that he was aware of his actions. The trial court also, after considering the evidence of the brother of the appellant P.W.5 - Ashok and P.W.7 - P.I. Vilas Dhuri has held that from their evidence it was clear that at no point of time these witnesses have stated that the accused was of unsound mind.

9. In our view, there is no reason to take a different view than the view taken by the trial court. There is no case made out for interference with the judgment and order passed by the trial court. The appeal is accordingly dismissed.

(D.G.DESHPANDE,J.)

(V.M. KANADE, J.)